

AMENDED IN SENATE APRIL 20, 2010

SENATE BILL

No. 1446

Introduced by Senator Correa

February 19, 2010

An act to ~~add Section 2081.2 to the Fish and Game Code,~~ relating to endangered and threatened species.

LEGISLATIVE COUNSEL'S DIGEST

SB 1446, as amended, Correa. Endangered and threatened species: ~~incidental take permits.~~ *habitat mitigation.*

Existing law, the California Endangered Species Act (*CESA*), prohibits the importation, exportation, taking, possession, purchase, or sale of any threatened or endangered species, except in certain situations. ~~The~~ *CESA*, with exceptions, authorizes the Department of Fish and Game to authorize the take of threatened species, endangered species, or candidate species by permit if the take is incidental to an otherwise lawful activity, the impacts of the authorized take are minimized and fully mitigated, the permit is consistent with specified regulations, and the applicant ensures adequate funding to implement the minimization and mitigation measures and monitor compliance with, and effectiveness of, those measures.

~~This bill, with respect to the requirement that the applicant ensure adequate funding to implement the minimization and mitigation measures and monitor compliance with those measures, would require that an applicant that is a city, county, or other public agency be deemed to meet that requirement if the city, county, or other public agency complies with specified financial and accounting requirements and certifies that it will annually appropriate sufficient moneys to fund its~~

~~minimization and mitigation obligations. The bill would require that certification to include specified components.~~

This bill would make several statements of legislative intent, relating to the establishment of alternatives for financial assurances under CESA for public agencies that would ensure that those agencies fully fund their obligations on an ongoing basis for habitat mitigation and the maintenance and monitoring of that mitigation.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. It is the intent of the Legislature:*

2 *(a) To establish one or more alternatives for financial*
3 *assurances under the California Endangered Species Act (Chapter*
4 *1.5 (commencing with Section 2050) of Division 3 of the Fish and*
5 *Game Code) for public agencies that would ensure that those*
6 *agencies fully fund their obligations on an ongoing basis for habitat*
7 *mitigation and the maintenance and monitoring of that mitigation*
8 *pursuant to Section 2081 of the Fish and Game Code.*

9 *(b) That those alternatives described in subdivision (a) include,*
10 *but not be limited to, options based on a formula that considers*
11 *the geographic size of the public entity and its population, a letter*
12 *of credit, a memorandum of agreement, or other arrangements for*
13 *financial assurances.*

14 *(c) That any alternative established in accordance with this*
15 *section should provide, at a minimum, mechanisms to do all of the*
16 *following:*

17 *(1) Establish when a default of a public agency's mitigation*
18 *obligation has occurred.*

19 *(2) Provide access to the funds in the event of a default.*

20 *(3) Provide for the modification of any agreement that would*
21 *be approved by the Department of Fish and Game.*

22 ~~SECTION 1. Section 2081.2 is added to the Fish and Game~~
23 ~~Code, to read:~~

24 ~~2081.2. An applicant that is a city, county, or other public~~
25 ~~agency that does not have a known termination date, and has the~~
26 ~~authority to levy and collect taxes or fees for the purposes of~~
27 ~~paragraph (4) of subdivision (b) of Section 2081, shall be deemed~~

1 to meet the requirements of paragraph (4) of subdivision (b) of
2 Section 2081 if all of the following conditions are met:

3 (a) The city, county, or public agency certifies to the department
4 all of the following:

5 (1) Its financial statements are prepared in compliance with
6 generally accepted accounting principles for government agencies.

7 (2) It has not had a budget deficit of greater than 5 percent in
8 either of the two immediately preceding fiscal years.

9 (3) It is not in default for interest or principal payment on any
10 outstanding general obligation bonds.

11 (4) Its outstanding general obligation bonds are rated by
12 Standard and Poor's Corporation as not lower than BBB or by
13 Moody's Investors Service, Inc. as not lower than Baa.

14 (5) Its financial statements for the most recent fiscal year have
15 not received an adverse opinion, a disclaimer of opinion, or a
16 qualified opinion from an independent certified public accountant.

17 (b) The legislative body of the city, county, or public agency
18 certifies to the department that it will appropriate sufficient moneys
19 through its annual budget process to fund the minimization and
20 mitigation obligations pursuant to paragraph (2) of subdivision (b)
21 of Section 2081, and the costs of monitoring compliance with, and
22 effectiveness of, those measures, and annually appropriates funds
23 necessary to maintain that level of funding. This level of annual
24 funding shall be known as the "maintenance of effort" for purposes
25 of this section.

26 (c) For purposes of subdivision (b), the certification shall include
27 all of the following:

28 (1) The period of time that the maintenance of effort will be in
29 effect.

30 (2) The amount of the funding that will be provided and the
31 manner of its calculation.

32 (3) A provision for termination or modification of the
33 maintenance of effort to respond to materially changed
34 circumstances.

35 (4) A certification that any legal restrictions or limitations that
36 apply to the maintenance of effort do not materially impair the
37 agency's ability to maintain its obligations under this section.